

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN McDERMOTT,

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Plaintiff, : 04 Civ. 2392 (TPG)

- against -

OPINION

KIYAN MARANDI, et al.,

:

Defendants.

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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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This is an action against certain New York City Police Officers. The action is also brought against one Kiyan Marandi, who is not a police officer. Briefly summarized, plaintiff claims that he was improperly arrested twice by the police upon the spurious complaint of Marandi.

All defendants have moved for summary judgment. Plaintiff has moved for judgment on the pleadings as to Marandi's counterclaims. The motions for summary judgment are denied. The motion for judgment on the pleadings as to the counterclaims is granted.

There are issues of fact, regarding the first arrest, as to what complaint Marandi actually made to the police. To some extent these issues are created by discrepancies between the deposition testimony of the police and what facts were put down by the police in the complaint against plaintiff. There is also the issue of whether the arrest should have been made in view of a videotape which plaintiff offered to show to the police to demonstrate his innocence of the conduct complained of. These issues of fact prevent the court

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from deciding now whether plaintiff's claims of false arrest and malicious prosecution have merit, and also prevent the court from deciding on the defense of qualified immunity presented by the police.

There are also issues of fact regarding the second arrest. There is no question here about what complaint Marandi made to the police. The issue is whether the second arrest was justified in view of the offer of plaintiff again to use a videotape to demonstrate his innocence. Thus there are factual issues relating to the merits of plaintiff's claim and also to the defense of qualified immunity.

With regard to the counterclaims, they are so vague and poorly pleaded that plaintiff is entitled to judgment dismissing them.

For the foregoing reasons, defendants' motions for summary judgment are denied. Plaintiff's motion to dismiss the counterclaims is granted.

SO ORDERED.

Dated: New York, New York
September 28, 2007



THOMAS P. GRIESA
U.S.D.J.